

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PLATYPUS MARINE, INC., a Washington)
Corporation,)
Plaintiff,)
v.)
SHERWIN-WILLIAMS, INC., an Ohio)
Corporation,)
Defendant)
_____)

No.: C05-5631RBL

ORDER ON PLAINTIFF'S
MOTION FOR
RECONSIDERATION

This matter is before the Court on Plaintiff Platypus' Motion for Reconsideration of Order Granting Summary Judgment in favor of the Defendant. Platypus seeks an order rescinding the Court's prior Order for Summary Judgment.

ISSUE PRESENTED

The issue before the Court is whether or not a material fact exists regarding the creation and breach of a warranty of fitness for a particular purpose.

DISCUSSION

The plaintiff argues that Ray Meador told Doug Linde, in a telephone conversation, that the vinyl sealer could be used as a wood grain filler.

QUESTION (By Eric Anderson): So, in your telephone conversation, what specifically did you tell him? *Deposition of Doug Linde*, pg. 22.

ANSWER (By Doug Linde): I specifically told him that the grain filler was leaving white marks, so I wasn't going to be able to use it, that using the vinyl sealer alone would exceed the

1 recommended millage of what the guide says not to exceed. But with the millage exceeding what
2 it said, he felt that by the time we sanded it back down smooth with the surface of the grain of the
3 wood, that we should be fine. *Deposition of Doug Linde*, pg. 22.

4 Eric Anderson: And your understanding from talking with Ray about this problem with the
5 white marks was that it would be okay to use just the sealer as long as you sanded it down
6 enough to be within the specs? *Deposition of Doug Linde*, pg. 22.

7 Doug Linde: We didn't really talk about the specs. We talked about it would probably
8 exceed the mils that was recommended in the book, especially if you didn't sand it down smooth
9 to the grain. And his feeling was that because you're going to take off more than you put on, that
10 we would be fine. *Deposition of Doug Linde*, pg. 22.

11 QUESTION (By Jonah Harrison): You said you talked about it. Can you give me some
12 gist of the conversation. Did Doug say hey, I have white spots. I am going to take care of it?

13 ANSWER (By Ray Meador): He said he had white spots and I said that is weird. He said
14 what do you think it is from and I said I don't know. He said I'm just going to sand it and seal it.
15 What did you say in response to it when he said he was just going to sand it and seal it? See if it
16 works." *Deposition of Ray Meador*, Docket #23, Exhibit F, pages 40-41.

17 The telephone conversation between Doug Linde and Ray Meador does not create a
18 warranty of fitness for a particular purpose. There is no evidence to support Platypus' contention
19 that Ray Meador told Doug Linde that the vinyl sealer could be used as a wood filler.

20 CONCLUSION

21 For all of the foregoing reasons, Platypus' Motion for Reconsideration [Dkt. #28] is
22 **DENIED.**

23 It is so **ORDERED.**

24 Dated this 2nd day of November, 2006

25
26 
27 RONALD B. LEIGHTON
28 UNITED STATES DISTRICT JUDGE